

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JONATHAN RIVERA-PIEROLA,

Plaintiff,

V.

**BOARD OF REGENTS FOR THE
OKLAHOMA AGRICULTURAL
AND MECHANICAL COLLEGES,
STATE OF OKLAHOMA ex rel
OKLAHOMA STATE
UNIVERSITY, and ST MATTHEWS
UNIVERSITY INC,**

Defendants.

NO. CIV-21-616-PRW

**DEFENDANT ST. MATTHEW'S UNIVERSITY, INC.'S
SUPPLEMENT TO ITS MOTION TO DISMISS**

Defendant St. Matthew's University, Inc. ("SMU") files this Supplement to its Motion to Dismiss in response to the Court's Order issued on November 4, 2021. *See* ECF 22. In its Order, the Court requests supplemental briefing from the parties, addressing (1) where the alleged contract was made and (2) what jurisdiction's law of contracts should apply to the validity and interpretation of the alleged contract. In response, SMU respectfully shows the Court as follows:

Plaintiff generally relies on SMU's Student Handbook to support his breach of contract claim.¹ This alleged contract was formed (if at all) in the Cayman Islands. Indeed,

1 SMU assumes, without admitting, that the Student Handbook constitutes a contract between SMU and Plaintiff for purposes of its Motion to Dismiss and related pleadings.

SMU students, including Johnathan Rivera-Pierola (“Plaintiff”), attend new student orientation at SMU’s Cayman Island campus. *See* Ex. 1, Decl. of John D. Marvin. During the new student orientation on SMU’s Cayman Island campus, SMU informs students where they can access the SMU Student Handbook. *See id.* During the new student orientation on SMU’s Cayman Island campus, SMU also asks students to sign Appendix D of the Student Handbook, Waiver of Right to Reassignment for Clinical Rotations School of Veterinary Medicine (“Waiver”). *See id.* Accordingly, Plaintiff received notice of where to access the Student Handbook and also signed the Waiver and returned it to SMU during new student orientation at SMU’s Cayman Island campus. Therefore, the parties entered into the alleged contract in the Cayman Islands.

When a federal court is sitting in diversity, it must apply the forum state’s choice-of-law rules. *Boyd Rosen & Assocs., Inc. v. Kansas Mun. Gas Agency*, 123 F.3d 1351, 1352-53 (10th Cir. 1997). In Oklahoma, courts will apply the law of the state where the contract was made absent a choice-of-law provision. *Harvell v. Goodyear Tire & Rubber Co.*, 2006 OK 24, ¶ 14, 164 P.3d 1028, 1033-34. Therefore, Cayman Islands’ law governs the alleged contract here because it was formed in the Cayman Islands.

Courts in the Cayman Islands will look to the decisions of other courts applying English common law when dealing with common law principles, such as contracts. *See, e.g., Tempo Grp. Ltd. v. Fortune E. Asia Holding Corp.* [2015] 2 CILR Note 5 (applying the Supreme Court of the United Kingdom’s decision in *Rainy Sky SA v. Kookmin Bank* [2011] 1 WLR 2900). Notably, English common law supports SMU’s arguments in its

Motion to Dismiss and dismissal of Plaintiff's breach of contract claim. *See, e.g.*, Ex. 2, *Wood v. Capita Ins. Servs. Ltd.* [2017] UKSC 24 *per* Lord Neuberger at para 10 (the court must consider the contract as a whole to "ascertain the objective meaning of the language which the parties have chosen to express their agreement"); Ex. 3, *Rainy Sky SA v. Kookmin Bank* [2011] 1 WLR 2900, *per* Lord Clarke at para 23 ("Where the parties have used unambiguous language, the court must apply it.").

In conclusion, any alleged contract between Plaintiff and SMU was formed in the Cayman Islands. Therefore, Cayman Island law, which would lead to the same result as 10th Circuit and Oklahoma case law cited in SMU's Motion to Dismiss, governs Plaintiff's breach of contract claim.

Respectfully submitted,

/s/ Kimberly F. Williams

Kimberly F. Williams (admitted *pro hac vice*)

kwilliams@lockelord.com

Jennifer M. McCoy (admitted *pro hac vice*)

jennifer.mccoy@lockelord.com

LOCKE LORD LLP

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201

T: (214) 740-8000

F: (214) 740-8800

and

Jeremy Tubb, OBA #16739

jeremy.tubb@fullertubb.com

Courtney Warmington, OBA #18486

cwarmington@fullertubb.com

FULLER TUBB & BICKFORD, PLLC

201 Robert S. Kerr Avenue, Suite 1000

Oklahoma City, Oklahoma 73102

T: (405) 235-2575

F: (405) 232-8384

**ATTORNEYS FOR DEFENDANT
ST. MATTHEW'S UNIVERSITY, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via ECF electronic service on this 11th day of November 2021, to the following counsel of record:

R. Jack Freeman
jack@lsh-law-firm.com

Jason J. Bach
jbach@bachlawfirm.com

/s/ Kimberly F. Williams

Kimberly F. Williams